AMO REPORTS 82-6

MUNICIPAL LOT LEVIES: AN UPDATE

THE ASSOCIATION OF MUNICIPALITIES OF ONTARIO
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To the Municipal Clerk:

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"AMO Reports 82-6" was presented to the Hon. Claude Bennett, Minister of Municipal Affairs and Housing, on April 30, 1982. This Report provides updated information on, and should be considered in conjunction with, "AMO Reports 52".

TABLE OF CONTENTS

		PAGE
1.	INTRODUCTION	1
2.	BACKGROUND	1
3.	AMO'S PRESENT LOT LEVY POSITION	1
3.1	INVOLVEMENT OF THE OMB	2
3.2	HIATUS PERIOD	2
3.3	ACCOUNTABILITY	2
3.4	TIMING OF PAYMENT	3
3.5	LEVEL OF SERVICE	3
3.6	TYPES OF DEVELOPMENT	3
3.7	CALCULATING THE LOT LEVY CHARGE ..	4
3.8	OVER-SIZING AND FRONT-END FINANCING	4
3.9	OPERATING COSTS AND DEBT CHARGES .	5
3.10	GROWTH RELATED EXPENDITURES	5
3.10.1	Environmental Services	5
3.10.2	Health Services	5
3.10.3	Transportation	6
3.10.4	Protection to Persons and Property.	6
3.10.5	Recreation and Cultural Services ..	6
3.10.6	Serviced Land and Buildings	6
4.	CONCLUSION	7

MUNICIPAL LOT LEVIES: AN UPDATE

1. INTRODUCTION

The Association of Municipalities of Ontario believes that municipalities need permissive legislation with respect to lot levies due to the wide range of situations and the varying needs in municipalities throughout the Province. The legislation should be both comprehensive and comprehensible. It must strike an appropriate balance between the need for specificity and the desirability of general provisions. It is essential that legislation and accompanying regulations are developed as a complete package in consultation with the municipal sector.

2. BACKGROUND

In June, 1981, AMO Reports 52: Municipal Lot Levies was released. In that report, AMO put forth proposed lot levy legislation as well as guidelines for incorporation in regulations.

Following the release of the AMO report, the Minister of Municipal Affairs and Housing suggested that AMO meet with the Urban Development Institute and the Housing and Urban Development Association of Canada to discuss the issues surrounding lot levies. It was the Minister's hope that the municipalities and development industry could work together to formulate mutually-agreeable legislation.

AMO, UDI and HUDAC met on two occasions to discuss a variety of issues surrounding lot levy legislation. As a result of those meetings, each party agreed to review its position on a number of issues. For AMO, this involved reconsidering certain aspects of AMO Reports 52.

3. AMO'S PRESENT LOT LEVY POSITION

AMO believes that the proposed legislation and accompanying guidelines outlined in AMO Reports 52 remains the most desirable situation for municipalities. However, in an effort to ensure the introduction of workable and feasible legislaton, the Association has reconsidered and, in specific cases, revised its position on the following issues.

3.1 INVOLVEMENT OF THE OMB

AMO recommends that each municipality wishing to charge lot levies pass a by-law clearly stating the terms and conditions for imposing lot levies. Any objections to the by-law should be filed with the clerk. The clerk would then forward the by-law and the objections to the OMB. The OMB would decide whether the objections are frivilous or have merit. If the objections are deemed to have merit the by-law would then go before the OMB. If there are no objections to the by-law within the 21 day waiting period, it would be deemed to be approved. In essense, the process being recommended by AMO for the passage of the lot levy by-law would parallel the process for the approval of zoning by-laws as proposed in Bill 159, An Act to revise the Planning Act.

3.2 HIATUS PERIOD

AMO recommends that there be a 3 year period between the implementation of the new legislation and the expiry of current practices. Municipalities should be authorized to pass a lot levy by-law during this time period but should not be required to do so in order to collect lot levies. Should some municipalities choose not to pass a by-law within the allotted time frame they would not have the authority to charge lot levies, after the three year period, until such a by-law is passed.

Furthermore, the new legislation should provide municipalities with the ability to charge and collect the full amount in cash that has been determined and levied by the municipality during the hiatus period. Any disagreement with respect to the contribution paid by the developer would be refunded with interest once an actual amount was determined by the OMB.

3.3 ACCOUNTABILITY

The Association is aware of the value in maintaining accountability for the lot levy funds collected. The new legislation should require that municipalities illustrate need and provide justification for the amount levied in the by-law.

There should, however, be flexibility within the legislation to permit municipalities to utilize funds for the growth related expenditure with the highest municipal priority.

3.4 TIMING OF PAYMENT

The Association is flexible with respect to the timing of payment. The most agreeable time for all parties concerned is at the issuance of the building permit, except for items that need front-end financing as outlined in Section 3.8. AMO would like to point out, however, that should the issuance of the building permit be designated in the legislation as the time for payment by the developer, a mechanism must be built in to enable the upper tier municipalities to obtain their portion of the levy from the developer. Lower tier municipalities issue building permits, hence, they have a built in vehicle for collecting lot levies. However, as upper tier municipalities do not issue such permits, they have no direct avenue to ensure that their fee is collected. As upper tier municipalities do have growth related expenditures as a result of new development, it is essential that they are provided with a mechanism for collection.

3.5 LEVEL OF SERVICE

The importance of municipalities maintaining - as a minimum - the existing level of service largely contributes to the need for municipal lot levies. Any lot levy legislation introduced must ensure that existing service levels are maintained, in order that existing home-owners will not have to bear a double tax burden.

3.6 TYPES OF DEVELOPMENT

AMO maintains that all types of development should be subject to lot levy charges. Residential, commercial and industrial development each generate growth related expenditures that must be funded. However, the Association suggests that the inclusion of commercial and industrial lot levy charges should be optional at the discretion of each municipality. Thus, those

municipalities encouraging growth in a particular sector would have the flexibility not to charge lot levies for a specific type of development should that be deemed appropriate.

3.7 CALCULATING THE LOT LEVY CHARGE

In calculating the lot levy charge, AMO recommends that a clearly defined system for determining the amounts to be levied be established within the new legislation in order that all parties understand how the levy is determined. Such a system should clearly illustrate the components contributing to the lot levy charge. The inclusion of specified components within the system should be optional for municipalities. Components that municipalities should evaluate for inclusion in the lot levy calculation are discussed in Section 3.10 - growth related expenditures.

AMO recommends that lot levy charges be calculated using averaging. This may be done for the whole municipality or for specific areas designated within the by-law. In other words, averaging should be applied to the whole municipality with some specific exceptions. There may be certain instances when it is clearly in the best interest of the municipality and the developer to calculate a portion of the levy on a site specific basis. When the municipality and the developer mutually agree that such a situation exists, the legislation should be flexible enough to accommodate the levy calculation on a site specific basis.

3.8 OVER-SIZING AND FRONT-END FINANCING

Over-sizing may occur when it is more economical to provide certain services with capacity to service areas that will be developed in the future. The legislation should permit municipalities to pay-back developers who have provided over-sizing. An appropriate vehicle should be determined to provide pay-backs to the developer.

Additionally, some situations warrant the developer providing financing prior to the time legislated for the payment of the lot levy. The legislation should permit front-end financing when

such a need has been determined through a mutual agreement between the municipality and developer, or when the development can not proceed unless certain works are done in advance (e.g.: sewage plants, water filtration plants, etc).

3.9 OPERATING COSTS AND DEBT CHARGES

The Association believes that the inclusion of operating costs in the calculation of lot levies should not be permissable. Operating costs are the responsibility of the municipality and should be funded through the general tax levy.

On the other hand, AMO strongly maintains that a fair share of growth related debt charges--costs already incurred and costs to be incurred--should definitely be included in the lot levy charge.

3.10 GROWTH RELATED EXPENDITURES

The Association remains firm in its contention that legislative authority for the inclusion of "growth related expenditures" in the calculation of lot levy charges must be provided. The Association is referring to those costs attributable to growth. The following sections outline more specifically the Association's position on growth related expenditures.

3.10.1 Environmental Services

Components of environmental services such as water, sanitary sewers, storm sewers and the lands and facilities required for solid waste treatment and disposal have costs generated directly from all types of new development within a municipality. These components must be included in the lot levy charge.

3.10.2 Health Services

AMO believes that a municipality's capital grants for hospital construction should be included in the lot levy calculation. The Association suggests this is the only portion of Health Services that must be included.

3.10.3 Transportation

Other growth related expenditures that must be authorized in legislation are those associated with transportation. The need for roads, bridges, sidewalks, and transit systems relate directly to new development of all types, and it is essential that these components be included in the lot levy calculation. With respect to transit systems, the serviced lands, buildings and major equipment are justifiable expenditures that should form part of the lot levy charge.

3.10.4 Protection to Persons and Property

Protection to persons and property are two essential services. As an area grows, the need for serviced land and buildings for police and fire officials also grow. AMO firmly believes that such costs must be included in the lot levy calculation. As well, in the case of a new fire station being required due to the growth of an area, the Association recommends that initial capital outlay for fire trucks should also be included.

3.10.5 Recreational and Cultural Services

Serviced lands and buildings for recreational and cultural services are also components that the Association strongly recommends be included in the lot levy charge. The lack of additional recreational and cultural services within a new development ultimately results in over-burdening such services in other areas. In new development areas these facilities are important not only to the taxpayers but also to the developers.

3.10.6 Serviced Land and Buildings

There are some services that are extremely important for newly developed areas to obtain in order to provide these areas with comparable service levels as already exist. Additionally, there are certain types of services for which need is generated due entirely to the composition of the population being attracted to the new development. It is for these reasons that the Association recommends that serviced land and buildings should be included in the lot levy charge if the need for such has been demonstrated.

More specifically, the Association strongly recommends that when growth results in a need to expand general government services, the serviced land and buildings should be included in the lot levy calculation.

With the rising cost of social and family services, the Association recommends the inclusion of serviced lands and buildings for day care services within the lot levy charge.

4. CONCLUSION

AMO believes that appropriate lot levy legislation will resolve the many difficulties that exist with respect to this issue. The legislation, however, must provide the flexibility required by municipalities to efficiently, effectively and financially handle the growth it may experience. The Association urges the Provincial Government to consult with the municipalities before lot levy legislation is introduced to ensure that a workable solution is developed.

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